

Tax return information gathered in conducting a review may be used only for purposes of a review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than the reviewer or the tax return preparer being reviewed. The tax return preparer being reviewed will maintain a record of the review including the information reviewed and the identity of the persons conducting the review. After completion of the review, no documents containing information that may identify any taxpayer by name or identification number may be retained by a reviewer or by the reviewer's administrative or support personnel.

(2) The provisions of section 7216(a) and § 301.7216-1 shall not apply to any disclosure necessary to accomplish a conflict review. A conflict review is a review undertaken to comply with requirements established by any federal, state, or local law, agency, board or commission, or by a professional association ethics committee or board, to either identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is employed or acquired by another tax return preparer, or to identify, evaluate, and monitor actual or potential legal and ethical conflicts of interest that may arise when a tax return preparer is considering engaging a new client. Tax return information gathered in conducting a conflict review may be used only for purposes of a conflict review. No tax return information identifying a taxpayer may be disclosed in any evaluative reports or recommendations that may be accessible to any person other than those responsible for identifying, evaluating, and monitoring legal and ethical conflicts of interest. No tax return information identifying a taxpayer may be disclosed outside of the United States or a territory or possession of the United States unless the disclosing and receiving tax return preparers have procedures in place that are consistent with good business practices and designed to maintain the confidentiality of the disclosed return information.

(3) Any person (including administrative and support personnel) receiving tax return information in connection with a quality, peer, or conflict review is a tax return preparer for purposes of sections 7216(a) and 6713(a). Tax return information disclosed and used for purposes of a quality, peer, or conflict review shall not be used or disclosed for any other purpose.

(q) through (r) [Reserved] For further guidance, see § 301.7216-2(q) through (r).

(s) *Effective/applicability date.* This section applies to disclosures or uses of tax return information occurring on or after January 4, 2010.

(t) *Expiration date.* The applicability of this section expires on or before December 28, 2012.

[T.D. 9478, 75 FR 52, Jan. 4, 2010]

§ 301.7216-3 Disclosure or use permitted only with the taxpayer's consent.

(a) *In general*—(1) *Taxpayer consent.* Unless section 7216 or § 301.7216-2 specifically authorizes the disclosure or use of tax return information, a tax return preparer may not disclose or use a taxpayer's tax return information prior to obtaining a written consent from the taxpayer, as described in this section. A tax return preparer may disclose or use tax return information as the taxpayer directs as long as the preparer obtains a written consent from the taxpayer as provided in this section. The consent must be knowing and voluntary. Except as provided in paragraph (a)(2) of this section, conditioning the provision of any services on the taxpayer's furnishing consent will make the consent involuntary, and the consent will not satisfy the requirements of this section.

(2) *Taxpayer consent to a tax return preparer furnishing tax return information to another tax return preparer.* (i) A tax return preparer may condition its provision of preparation services upon a taxpayer's consenting to disclosure of the taxpayer's tax return information to another tax return preparer for the purpose of performing services that assist in the preparation of, or provide auxiliary services in connection with the preparation of, the tax return of the taxpayer.

(ii) *Example.* The application of this paragraph (a)(2) may be illustrated by the following example:

Example. Preparer P, who is located within the United States, is retained by Company C to provide tax return preparation services for employees of Company C. An employee of Company C, Employee E, works for C outside of the United States. To provide tax return preparation services for E, P requires the assistance of and needs to disclose E's tax return information to a tax return preparer who works for P's affiliate located in the country where E works. P may condition its provision of tax return preparation services upon E consenting to the disclosure of E's tax return information to the tax return preparer in the country where E works.

(3) *The form and contents of taxpayer consents—(i) In general.* All consents to disclose or use tax return information must satisfy the following requirements—

(A) A taxpayer's consent to a tax return preparer's disclosure or use of tax return information must include the name of the tax return preparer and the name of the taxpayer.

(B) If a taxpayer consents to a disclosure of tax return information, the consent must identify the intended purpose of the disclosure. Except as provided in § 301.7216-3(a)(3)(iii), if a taxpayer consents to a disclosure of tax return information, the consent must also identify the specific recipient (or recipients) of the tax return information. If the taxpayer consents to use of tax return information, the consent must describe the particular use authorized. For example, if the tax return preparer intends to use tax return information to generate solicitations for products or services other than tax return preparation, the consent must identify each specific type of product or service for which the tax return preparer may solicit use of the tax return information. Examples of products or services that must be identified include, but are not limited to, balance due loans, mortgage loans, mutual funds, individual retirement accounts, and life insurance.

(C) The consent must specify the tax return information to be disclosed or used by the return preparer.

(D) If a tax return preparer to whom the tax return information is to be disclosed is located outside of the United

States, the taxpayer's consent under § 301.7216-3 prior to any disclosure is required. See § 301.7216-2(c) and (d).

(E) A consent to disclose or use tax return information must be signed and dated by the taxpayer.

(ii) *The form and contents of taxpayer consents with respect to taxpayers filing a return in the Form 1040 series—guidance describing additional requirements for taxpayer consents with respect to Form 1040 series filers.* The Secretary may issue guidance, by publication in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), describing additional requirements for tax return preparers regarding the format and content of consents to disclose and use tax return information with respect to taxpayers filing a return in the Form 1040 series, e.g., Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ.

(iii) *The form and contents of taxpayer consents with respect to all other taxpayers.* A consent to disclose or use tax return information with respect to a taxpayer not filing a return in the Form 1040 series may be in any format, including an engagement letter to a client, as long as the consent complies with the requirements of § 301.7216-3(a)(3)(i). Additionally, the requirements of § 301.7216-3(c)(1) are inapplicable to consents to disclose or use tax return information with respect to taxpayers not filing a return in the Form 1040 series. Solely for purposes of a consent issued under § 301.7216-3(a)(3)(iii), in lieu of identifying specific recipients of an intended disclosure under § 301.7216-3(a)(3)(i)(B), a consent may allow disclosure to a descriptive class of entities engaged by a taxpayer or the taxpayer's affiliate for purposes of services in connection with the preparation of tax returns, audited financial statements, or other financial statements or financial information as required by a government authority, municipality or regulatory body.

(iv) *Examples.* The application of § 301.7216-3(a)(3)(iii) may be illustrated by the following examples:

Example 1. Consistent with applicable legal and ethical responsibilities, Preparer Z sends its client, a corporation, Taxpayer C, an engagement letter. Part of the engagement letter requests the consent of Taxpayer C for

the purpose of disclosing tax return information to an investment banking firm to assist the investment banking firm in securing long term financing for Taxpayer C. The engagement letter includes language and information that meets the requirements of § 301.7216-3(a)(3)(i), including: (I) Preparer Z's name, Taxpayer C's name, and a signature and date line for Taxpayer C; and (II) a statement that "Taxpayer C authorizes Preparer Z to disclose the portions of Taxpayer C's 2009 tax return information to the firm retained by Taxpayer C necessary for the purposes of assisting Taxpayer C secure long term financing." The engagement letter satisfies the requirements of § 301.7216-3(a)(3) for the disclosure of the information provided therein for the specific purpose stated.

Example 2. Consistent with applicable legal and ethical responsibilities, Preparer N sends its client, a corporation, Taxpayer D, an engagement letter. Part of the engagement letter requests the consent of Taxpayer D for the purpose of disclosing tax return information to Preparer N's affiliated firms located outside of the United States for the purposes of preparation of Taxpayer D's 2009 tax return". The engagement letter includes language and information that meets the requirements of § 301.7216-3(a)(3)(i), including: (I) Preparer N's name, Taxpayer D's name, and a signature and date line for Taxpayer D; (II) a statement that "Taxpayer D authorizes Preparer N to disclose Taxpayer D's 2009 tax return information to Preparer N's affiliates located outside of the United States for the purposes of assisting Preparer N prepare Taxpayer D's 2009 tax return"; and (III) a statement that, in providing consent, Taxpayer D acknowledges that its tax return information for 2009 will be disclosed to tax return preparers located abroad. The engagement letter satisfies the requirements of § 301.7216-3(a)(3) for the disclosure of the information provided therein for the specific purpose stated.

(b) *Timing requirements and limitations*—(1) *No retroactive consent.* A taxpayer must provide written consent before a tax return preparer discloses or uses the taxpayer's tax return information.

(2) *Time limitations on requesting consent in solicitation context.* A tax return preparer may not request a taxpayer's consent to disclose or use tax return information for purposes of solicitation of business unrelated to tax return preparation after the tax return preparer provides a completed tax return to the taxpayer for signature.

(3) *No requests for consent after an unsuccessful request.* With regard to tax return information for each income tax

return that a tax return preparer prepares, if a taxpayer declines a request for consent to the disclosure or use of tax return information for purposes of solicitation of business unrelated to tax return preparation, the tax return preparer may not solicit from the taxpayer another consent for a purpose substantially similar to that of the rejected request.

(4) *No consent to the disclosure of a taxpayer's social security number to a return preparer outside of the United States with respect to a taxpayer filing a return in the Form 1040 Series*—(i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, a tax return preparer located within the United States, including any territory or possession of the United States, may not obtain consent to disclose the taxpayer's social security number (SSN) with respect to a taxpayer filing a return in the Form 1040 Series, for example, Form 1040, Form 1040NR, Form 1040A, or Form 1040EZ, to a tax return preparer located outside of the United States or any territory or possession of the United States. Thus, if a tax return preparer located within the United States (including any territory or possession of the United States) obtains consent from an individual taxpayer to disclose tax return information to another tax return preparer located outside of the United States, as provided under §§ 301.7216-2(c) and 301.7216-2(d), the tax return preparer located in the United States may not disclose the taxpayer's SSN, and the tax return preparer must redact or otherwise mask the taxpayer's SSN before the tax return information is disclosed outside of the United States. If a tax return preparer located within the United States initially receives or obtains a taxpayer's SSN from another tax return preparer located outside of the United States, however, the tax return preparer within the United States may, without consent, retransmit the taxpayer's SSN to the tax return preparer located outside the United States that initially provided the SSN to the tax return preparer located within the

United States. For purposes of this section, a tax return preparer located outside of the United States does not include a tax return preparer who is continuously and regularly employed in the United States or any territory or possession of the United States and who is in a temporary travel status outside of the United States.

(ii) *Exception.* A tax return preparer located within the United States, including any territory or possession of the United States, may obtain consent to disclose the taxpayer's SSN to a tax return preparer located outside of the United States or any territory or possession of the United States only if the tax return preparer within the United States discloses the SSN to a tax return preparer outside of the United States through the use of an adequate data protection safeguard as defined by the Secretary in guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter) and verifies the maintenance of the adequate data protection safeguards in the request for the taxpayer's consent pursuant to the specifications described by the Secretary in guidance published in the Internal Revenue Bulletin.

(5) *Duration of consent.* A consent document may specify the duration of the taxpayer's consent to the disclosure or use of tax return information. If a consent agreed to by the taxpayer does not specify the duration of the consent, the consent to the disclosure or use of tax return information will be effective for a period of one year from the date the taxpayer signed the consent.

(c) *Special rules*—(1) *Multiple disclosures within a single consent form or multiple uses within a single consent form.* A taxpayer may consent to multiple uses within the same written document, or multiple disclosures within the same written document. A single written document, however, cannot authorize both uses and disclosures; rather one written document must authorize the uses and another separate written document must authorize the disclosures. Furthermore, a consent that authorizes multiple disclosures or multiple uses must specifically and separately identify each disclosure or use. See § 301.7216-3(a)(3)(iii) for an exception to this rule for certain taxpayers.

(2) *Disclosure of entire return.* A consent may authorize the disclosure of all information contained within a return. A consent authorizing the disclosure of an entire return must provide that the taxpayer has the ability to request a more limited disclosure of tax return information as the taxpayer may direct.

(3) *Copy of consent must be provided to taxpayer.* The tax return preparer must provide a copy of the executed consent to the taxpayer at the time of execution. The requirements of this paragraph (c)(3) may also be satisfied by giving the taxpayer the opportunity, at the time of executing the consent, to print the completed consent or save it in electronic form.

(d) *Effective/applicability date.* This section applies to disclosures or uses of tax return information occurring on or after January 1, 2009.

[T.D. 9375, 73 FR 1073, Jan. 7, 2008, as amended by T.D. 9409, 73 FR 37806, July 2, 2008; T.D. 9437, 73 FR 76217, Dec. 16, 2008]

PENALTIES APPLICABLE TO CERTAIN
TAXES

**§ 301.7231-1 Failure to obtain license
for collection of foreign items.**

For provisions relating to the obtaining of a license for the collection of foreign items, see section 7001 and § 301.7001-1.

Other Offenses

**§ 301.7269-1 Failure to produce
records.**

Whoever fails to comply with any duty imposed upon him by section 6018, 6036 (in the case of an executor), or 6075(a), or, having in his possession or control any record, file, or paper, containing or supposed to contain any information concerning the estate of the decedent, or, having in his possession or control any property comprised in the gross estate of the decedent, fails to exhibit the same upon request of any officer or employee of the Internal Revenue Service who desires to examine the same in the performance of his duties under chapter 11 of the Code (relating to estate taxes) shall be liable to a penalty of not exceeding \$500, to be recovered with costs of suit, in a civil